

MINUTES
BOARD OF ADJUSTMENT
April 3, 2008

THOSE IN ATTENDANCE:

Gary Soule, Chairman	Jason Jaggi, Planner
Mel Disney	Kevin O'Keefe, City Attorney
Rick Bliss	
Victor Cohen	
Ray Tait	

Chairman Soule called the meeting to order at 5:05 p.m., after having indicated that the short delay is to await the arrival of the City Attorney. He welcomed everyone to the meeting, introduced himself and asked that the other members of the Board introduce themselves.

MINUTES

The minutes of the meeting of December 6, 2007 were presented for approval. The minutes were approved, after having been previously distributed to each member.

Chairman Soule indicated that there are two items to be considered this evening and confirmed the attendance of the applicants. He stated that the members of this Board are appointed by the Mayor and approved by the City's Board of Aldermen and serve without monetary compensation. He indicated that a full compliment of the Board consists of five members and that four members must vote in favor of a variance in order for a variance to be granted. He stated that the applicant must demonstrate practical hardship with regard to the property in order to justify the granting of a variance. He then advised that this is a duly advertised, duly noted meeting and that the proceedings are of record. He reminded everyone that all testimony is tape-recorded and the minutes produced from this recording. He then asked that all individuals wishing to speak to please speak clearly. He stated that generally, the City will present its exhibits first, after which the applicant will make their presentation, then questions/comments from the Board members will ensue after which audience comments will be solicited and finally, a vote will take place.

APPEAL FROM SAM CHIMENTO, CORNERSTONE PROPERTIES, FOR THE PROPERTY
AT 621 & 625 WESTWOOD

Mr. Sam Chimento, owner/developer, was in attendance at the meeting.

Everyone wishing to speak this evening regarding this appeal was sworn in by the recording secretary.

Chairman Soule asked Jason Jaggi to provide an overview of the appeal.

Jason Jaggi indicated that this request is continued from the December meeting. He began a PowerPoint presentation, first presenting a slide depicting the subject parcels and their zoning designation.

Jason stated that the two lots, zoned R-6, currently contain one, 6-unit apartment unit each, with each building being on its own individual lot. He stated that nearly all the rear yard of each lot is covered with pavement and that there is no covered or below grade parking currently. Photos of the site were presented. He stated that the existing drive access is to be removed and a new access, from Bemis Way, is to be constructed. He advised the members that three (3) variance requests for each lot are being requested.

Chairman Soule asked if the City would like to present its Exhibits.

City Attorney O'Keefe presented the following exhibits with regard to the application. He asked that they be entered into the record on behalf of the City:

- A. City's Code of Ordinances, specifically the Article referencing the Board of Adjustment and Sections 19.8 and 19.9;
- B. Application for Zoning Review submitted by the applicant;
- C. Zoning Review denial letter;
- D. Application for Appeal;
- E. Revised drawings submitted by the applicant; and
- F. Staff Report.

Chairman Soule indicated that all Exhibits will be received.

Sam Chimento (owner/developer) introduced himself to the members. He stated that the location of the proposed parking (on the rear of the properties) is the only possible place to park and is also where the current tenants park. He stated they cannot put parking below the buildings and that they are attempting to get cars off the street. He indicated that one lot is 55' wide and the other, 65' wide. He indicated that they are proposing 12, 9' wide parking spaces. He stated they are maintaining the 5' side yard setbacks, but that the shared property line (interior lot line) is where they are not meeting the 5' setback, since the carport will expand the width of both properties. He indicated that they are also asking for a variance to allow additional coverage for both the rear yard and total lot. He informed the Board that they are going to be increasing the greenspace due to the removal of the existing driveway.

Ray Tait asked what has changed since the December meeting.

Mr. Chimento indicated that the stairwell that was previously proposed has been removed from the plans, since it was discovered that it, too, would have required variances.

Chairman Soule asked if it would be fair to say that the applicant has been simplified.

Jason Jaggi replied “yes”.

Rick Bliss referred to the letter from Kileen Studio Architects which includes calculations. He asked if staff has confirmed/verified the calculations as outlined in this letter.

Jason Jaggi replied “no”. He stated that he did speak with the architect back in December to be sure the calculations were done correctly and that the drawings are signed and sealed. He reminded the members that they are limited to the variances being requested.

Chairman Soule asked if the City has no reason to believe that the plans are incorrect.

Jason Jaggi indicated that is correct.

Chairman Soule asked if it is staff’s opinion that that applicant has demonstrated hardship.

Jason Jaggi stated that they are limited to provide covered parking due to the existing improvements on the lots.

Chairman Soule asked if other area buildings provide underground parking.

Jason Jaggi replied “yes”.

Chairman Soule asked if this is reasonable use of the property.

Jason Jaggi replied “yes”.

Chairman Soule asked if the request complies with all other setback requirements.

Jason Jaggi replied “yes”.

Chairman Soule asked if the project will result in a decrease of impervious coverage.

Jason Jaggi replied “yes”.

Chairman Soule asked if the construction of the carport is consistent with needed improvements.

Jason Jaggi replied “yes”; he stated it is part of the total renovation.

Chairman Soule asked if staff believes the construction of the carport will have a negative impact.

Jason Jaggi replied “no”.

Chairman Soule asked if the proposed carport will be an improvement over current conditions.

Jason Jaggi replied “yes”.

Chairman Soule asked if the carport could be built without the variances.

Jason Jaggi replied that he did not believe so.

Being no further questions or comments, Chairman Soule announced that votes will be taken first with regard to 621 Forest Court.

Chairman Soule made a motion to grant a 5 foot variance from the side yard setback requirement for accessory structures to allow the construction of a carport. The motion was seconded by Rick Bliss and unanimously approved by the members.

Chairman Soule made a motion to grant a variance to allow total lot impervious coverage at 71.39%, above the allowance of 55%. The motion was seconded by Ray Tait and unanimously approved by the members.

Chairman Soule made a motion to grant a variance to allow rear yard coverage for accessory structures at 41.58%, above the allowance of 35%. The motion was seconded by Ray Tait and unanimously approved by the members.

Chairman Soule announced that votes will now be taken with regard to 625 Forest Court.

Chairman Soule made a motion to grant a 5 foot variance from the side yard setback requirement for accessory structures to allow the construction of a carport. The motion was seconded by Rick Bliss and unanimously approved by the members.

Chairman Soule made a motion to grant a variance to allow total lot impervious coverage at 70.92%, above the allowance of 55%. The motion was seconded by Rick Bliss and unanimously approved by the members.

Chairman Soule made a motion to grant a variance to allow rear yard coverage for accessory structures at 40.28%, above the allowance of 35%. The motion was seconded by Rick Bliss and unanimously approved by the members.

AN APPEAL FROM CONRAD PROPERTIES FOR THE PROPERTY AT 216 N. MERAMEC

Mr. Craig Saur, owner/developer and President of Conrad Properties and Mr. Michael Seamands, attorney for applicant were in attendance at the meeting.

Everyone wishing to speak this evening regarding this appeal was sworn in by the recording secretary.

Chairman Soule asked Jason Jaggi to provide an overview of the appeal.

Jason Jaggi indicated that the property, zoned C-2, now contains what is known as the Daniele Hotel. He stated that the properties behind the subject property are zoned R-3, the properties across the street are zoned C-2 and the properties across Kingsbury Boulevard are zoned R-4. He stated the building, constructed in 1964, currently contains 82 hotel rooms and provides surface and underground parking. He stated the 4 story building currently has a FAR of 2.0 and that the applicant is proposing the addition of a 5th floor to provide for a total of 119 hotel rooms. He stated that the applicant will also reconfigure parking to provide additional spaces, which is not part of the variance request (in other words, a parking variance is not being sought). Jason indicated that as a hotel, a conditional use permit is required which is subject to approval by the Board of Aldermen.

An aerial map of the site and surrounding properties was presented, as well as site and adjacent site photographs. Jason indicated that the Zoning Ordinance allows 7 stories or 90 feet in this zoning district. Jason indicated that Section 22.4 of the Zoning Ordinance defines the maximum Floor Area Ratio (FAR) at 1.5 for this zoning district. Jason explained that Planned Unit Development (PUD) projects are eligible for relief from FAR; however, this project does not meet the definition of a PUD and as such, a variance is being sought.

Jason Jaggi provided an explanation of the definition of FAR, stating that it is the total floor area divided by the area of the lot. He informed the members that certain areas can be excluded from the FAR calculations (i.e. landscape areas, mechanical rooms, parking). He stated that with regard to this project, the garage area is not included in the FAR calculations.

Chairman Soule asked if the City would like to present its Exhibits.

City Attorney O'Keefe presented the following exhibits with regard to the application. He asked that they be entered into the record on behalf of the City:

- a) City's Code of Ordinances and Master Plan, specifically Section 22.4, which defines the maximum FAR for the C-2 District;
- b) Application for Zoning Review submitted by the applicant;
- c) Zoning Review denial letter;
- d) Application for Appeal;
- e) Materials submitted by the applicant; and
- f) Staff Report.

Chairman Soule indicated that all Exhibits will be received.

Mr. Saur distributed a paper copy of a PowerPoint presentation, which, due to technological problems, was unable to be shown.

City Attorney O'Keefe indicated that the presentation will be marked as applicant's exhibit 1 (collectively).

Mr. Saur informed the members that the project will be Hotel Indigo. He provided a brief explanation of Conrad Properties, stating that they have done over \$560 million in developments, with over \$300 million in Clayton (Clayton on the Park, Maryland Walk, 800 S. Hanley to name a few). He stated that the building contains 47,000 square feet above ground with 27,755 square feet of ground area. He stated the building also contains underground parking and that currently has a FAR of 2.0, which is already non-conforming. He stated the proposal is to add another floor which will increase the FAR to 2.51. He stated they have no intention to change the use of the building and will keep it a hotel. He stated that the proposed height, setbacks and parking (94 spaces) will all be in compliance with the provisions of the Zoning Ordinance. He stated they plan extensive renovations to the building that are necessary and that will improve the aesthetics, such as making the building ADA compliant, removing the asbestos, adding City streetscape, cosmetic changes to provide an exercise facility and larger lobby. He stated that their ceiling heights are 9.5 feet, lower than the ceiling heights of the office building to the south. He stated that the office building is 70 feet in height and the hotel, after renovation, measures 59 feet in height. He informed the members that his company has control over the property at North Meramec and Pershing for which they plan a PUD project. He stated the proposed improvements will make the building look like a hotel. He stated the property has been neglected for years. He stated they also propose to add lighting to the garage and correct existing water problems. He reiterated that they will bring the property to ADA compliance, install a new HVAC system, renovate the bathrooms, remove the asbestos, add plasma televisions, install a new roof, enclose the front overhang, change the signage, add a new front awning, change the curb and remove the bulky planters. He stated that the second floor of the hotel will contain a swimming pool and sitting area and a rest area and small bar will be on the lower level. He stated the existing stairs on the first level will be removed and replaced with a ramp to the second floor where the general manager's office will be as well as the elevator bank. He stated that public benefits are being added such as a full sprinkler system, ADA accessibility, asbestos removal and new City streetscape.

Mr. Seamands, Attorney (714 Locust – St. Louis, MO 63101) stated the practical difficulty is the lot size, due to the fact that the building already exceeds and maximum FAR. He stated if the variance is not approved, they cannot do the renovations. He stated that revenue will be generated by the additional rooms. He reiterated that without the variance, there will be no renovation. He informed the members that other buildings in the immediate area exceed the proposed height of this building. He stated the character of the building will not change and that additional floor space is needed to generate additional revenue.

Ray Tait asked what the FAR is on the adjoining office building.

Jason Jaggi indicated that he did not have an exact answer, but that it was constructed in the 1980s and provides an open area and landscaping. He stated he does not know what the maximum FAR was in the 80s. Jason informed the Board that a PUD has to be a mixed-use development/project AND exceed the maximum height or FAR for the district; this project does not qualify for a PUD.

City Attorney O’Keefe asked Mr. Saur if the property was purchased in October, 2007.

Mr. Saur replied “yes”. He stated it was purchased by his company and Jerry Glick.

City Attorney O’Keefe asked the purchase price.

Mr. Saur replied 3.5 million dollars.

City Attorney O’Keefe asked if the hotel continues to operate.

Mr. Saur replied “no”. He stated the hotel was losing money.

City Attorney O’Keefe asked if it would be fair to say that they have no experience with its operating cost or profitability under his ownership.

Mr. Saur agreed.

Chairman Soule asked if there is any other way to expand other than height.

Jason Jaggi replied “no”.

Chairman Soule asked if the project meets all other requirements with respect to the proposed renovations.

City Attorney O’Keefe stated that it appears to satisfy other requirements; however, it has not yet been reviewed by the Plan Commission, Architectural Review Board or Board of Aldermen.

Chairman Soule stated that this is only the first phase of the approval process.

City Attorney commented that with regard to Chairman Soule’s earlier question as to whether the project meets all other requirements, it is unknown at this time.

Chairman Soule concurred. He stated he was only referring to variance issues. He asked if it is staff’s opinion that this project is an improvement.

Jason Jaggi commented that this building could use attention and that renovation/improvements would be welcomed. He informed the members that the project also would have to meet the current Building Code standards, which is also a benefit.

Chairman Soule asked if all these issues would be addressed by other City Officials including the Building Official.

Jason Jaggi replied “yes”.

Rick Bliss stated it seems to him that the variance is being sought to provide for additional revenue. He commented that it may be possible they paid too much for the property.

Mr. Seamands commented that it was purchased without the intention of operating it as a hotel.

Mr. Saur stated that it was purchased for the property value and its location. He stated that if the variance is not approved, they will have to either re-sell the property or sit on it for a few years.

Chairman Soule referred to Page 2 of the letter from Michael Seamands which states that “Financial considerations may be taken into account in determining whether practical difficulties exist for the purposes of granting a variance.” Chairman Soule then mentioned the case files as referred to in this letter.

City Attorney O’Keefe stated that the 1959 case (Carlyle-Lowell, Inc. v. Ennis) had circumstances that were significant (i.e. the property was vacant and never used, it was an irregularly shaped lot, there was an easement burden as well as grade problems). He reiterated that the property was not used for 25 or more years.

Chairman Soule commented that there are factual distinctions between the two cases and cautioned the other members that the context in that case is significant. He stated his concern has nothing to do with the renovation plans for the property and that the applicant has done a fine job with other Clayton projects. He stated there may be a process issue here with regard to hardship.

City Attorney O’Keefe stated that the basis to establish hardship is problematic here and with enforcing the standard in the future. He indicated that financial considerations can be considered with other hardship issues. He then referred to other case files as cited in Mr. Seamands’ letter (Conner v. Herd) whereby a request for a side yard setback variance was requested to erect a fire station on a residential lot and (Brown v. Board of Adjustment), a food processing use whereby it was determined that the use could not continue without a variance and (Rosedale-Skinker Improvement Association, Inc. v. Board of Adjustment of the City of St. Louis) whereby without a variance, the cost and burden would have been to the public. Mr. O’Keefe commented that the project is excellent, but questions if this is the only way to facilitate the project. He then referred to the Income Statement as provided by the applicant stating that there was a \$4,000 loss in a 7 month period.

Mr. Saur informed the members that the hotel was only charging ½ day rates. He stated even if he owned the property free and clear, he would still lose money.

Mr. Seamands stated that those case files were mentioned because the Board can take financial aspects into consideration. He stated the Board has discretion of whether to consider financial aspects or not.

Chairman Soule asked if the applicant was provided a copy of staff’s report.

Jason Jaggi replied “yes”.

Chairman Soule asked if the applicant had a chance to read the report.

Mr. Seamands replied “yes”.

Chairman Soule asked if the applicant believes there is enough to get the variance without the financial issues.

Mr. Seamands replied “yes”. He stated they are limited by the size of the lot compared to other lots in the area. He stated that the 168 lot is larger than their lot.

City Attorney O’Keefe stated it is an issue of intensity.

Mr. Seamands mentioned the physical aspects of the lot. He stated this would be the same as asking for a setback variance, but that they want to go up versus out.

Chairman Soule commented that the current FAR already exceeds what is allowed by the Zoning Ordinance.

Jason Jaggi concurred.

Mr. Rob Gieryn, 220 N. Meramec, voiced his concern with the asbestos removal and his proximity to it. He stated he is also concerned with the parking, noise, dust and additional traffic. He stated that the neighborhood is primarily residential.

Ms. Diana Darr, 7918 Kingsbury and Property Manager for the Clayton Square Apartments, voiced her concern with the noise, dust and parking. She stated she would like parking kept off their lot.

Chairman Soule asked about parking.

Mr. Saur stated that 94 spaces would be provided as required by the Zoning Ordinance. He stated that there are currently 62 spaces in the garage and that the storage and laundry would be removed from the underground garage to provide additional parking.

Ms. Darr indicated that when the Daniele was in operation, the garage was not being used.

Rick Bliss referred to Page 4 of Staff’s Report where height is discussed; indicating that the C-2 allows for a height of 7 stories or 90 feet. He asked why the addition of only one story is being requested.

Mr. Saur indicated that is due to a parking issue.

Mr. Seamands, referring to the Income Statement, commented that the occupancy rate was only at 60% with a daily room rate in the \$70’s.

Rick Bliss commented that they are proposing to add 37 rooms.

Mr. Saur stated the building cannot operate as-is.

Rick Bliss stated that it would be great to see a nice building there and that it seems to him that a PUD would be more appropriate, but that it does not qualify due to the nature of the use. He asked why not change the PUD requirements.

Jason Jaggi indicated that the request could be accomplished by amending the Zoning Ordinance's PUD requirements.

City Attorney O'Keefe stated that is not a subject for this Board.

Mel Disney asked if the variance is granted, what would prevent a change in use of the building. He asked if the variance would only apply to this project.

Jason Jaggi replied "no"; a variance runs concurrent with the property. He stated the use could be changed if it meets the Zoning Ordinance permitted/conditional uses. He reminded the members that the use as a hotel requires approval of a conditional use permit.

Chairman Soule stated he shares many of the comments made by Mr. O'Keefe. He stated what he believes raised the red flag was the strategic decision to raise the argument about the financial implications. He stated he believes they have a reasonably good case without the financial uses, but by raising the argument, he believes, created more problems.

Mr. Seamands stated that they wanted to make a clear record of the issues and that if hardship is determined without the financial issues, the Findings of Fact, Conclusions of Law could indicate such.

Chairman Soule advised Mr. Seamands that this Board does not do those.

Mr. Saur commented that it is already a non-intense hotel and non-conforming. He stated they are looking to add value to North Meramec.

Chairman Soule stated granting this variance could set a negative precedent and that it is already on the record that financial issues were raised.

City Attorney O'Keefe emphasized that his concern do not arise from Conrad's ownership of the property or the plans for the property.

Chairman Soule commented that the application has already been submitted.

Mr. Saur asked if they could withdraw and re-submit.

Mr. O'Keefe replied "yes". He informed Mr. Saur that if a vote is taken and the variance request is denied, the same or similar application could not be submitted for a period of one year.

Chairman Soule asked the applicant if he would like to take a short break to privately discuss their options with his attorney.

A short break was taken to give the applicant and his attorney an opportunity to decide how they wished to proceed.

Chairman Soule asked the applicant if he has reached a decision on how they wish to proceed.

Mr. Seamands asked Mr. O'Keefe if the same application could be submitted with the exclusion of the financial aspects.

City Attorney O'Keefe stated the one year time period is triggered only if the application is denied by a vote.

Mr. Seamands stated the applicant wishes to proceed with a vote.

Chairman Soule made a motion to grant a variance from Section 22.4 of the Zoning Ordinance to allow a FAR of 2.51. The motion was seconded by Ray Tait and received the following voice/roll call vote: Ayes: Chairman Soule, Victor Cohen, Ray Tait. Nays: Rick Bliss and Mel Disney.

The variance is denied.

Being no further business for the Board of Adjustment, this meeting adjourned at 6:50 p.m.

Recording Secretary